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Complaint Form, Consent Form, and Complaint Processing Procedures

**DISCRIMINATION COMPLAINT
FORM
to the
United States Department of
Education Office for Civil Rights**

1. Name of person filing this complaint:

Last Name, First, Middle

Swain, Lauren

Address:

8532 N. Ivanhoe St., #208

City, State, Zip Code:

Portland, OR 97203

Home/Work Telephone:

[REDACTED]

Email Address:

lauren@paulsouthwick.com

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name, First, Middle

Moulton, Rachel

Address:

[REDACTED]

City, State, Zip Code:

Home/Work Telephone:

Email Address:

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution:

Brigham Young University (BYU-I)

Address:

525 Center St.

City, State, Zip Code:

Rexburg, ID, 83460

Department/School:

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

☐ Discrimination **based on sex (specify)**

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Discrimination on the basis of sexual orientation

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

BYU-I maintains anti-LGBT policies. Current policy is ambiguous about whether or not same-sex dating will be disciplined. Professors taught anti-LGBT content in many of classes Rachel attended. The LGBT group at BYU-I was not allowed to meet on campus. BYU-I taught that same sex attraction could be "cured." When Rachel realized she could not be "cured", she attempted suicide in her first semester at BYU-I. Rachel felt unwelcome at BYU-I and left the school in 2017. Rachel left again without graduating after returning for an online semester in late 2020 because the discriminatory teachings in the classes Rachel attended were too harmful to her mental health. Please see attached declaration.

6. What is the most **recent date** you were discriminated against?

Date: Current, Ongoing

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

X I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you waited until now to file your complaint.

1) the Covid-19 pandemic;
2) The Trump administration's policies and statements about religious exemptions to Title IX;
3) The Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity.
4) The discrimination against Rachel remains ongoing, as BYU's policies and teaching prevent Rachel from feeling safe enough at BYU to complete her degree program at BYU. Although the initial act of discrimination took place more than 180 days ago, Rachel's complaint should not be considered time-barred because BYU continues to discriminate against Rachel and to promulgate policies and practices that discriminate against LGBTQ+ students.

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8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

No

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: U.S. District Court - District of Oregon - Eugene Division

Date Filed: 03/29/21

Case Number or Reference: 6:21-cv-00474-AA

Results of Investigations/Findings by Agency or Court: Pending

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Not applicable

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Rachel would like BYU's policies amended to state that (1) same-sex dating relationships and displays of affection will be treated by BYU in the same manner as opposite-sex dating relationships and displays of affection; (2) students will not be punished for coming out as LGBTQ+ or for expressing their sexual or gender identity (through pronouns, clothing, hair, makeup, etc.); (3) BYU will not encourage or facilitate conversion therapy or any other sexual or gender orientation change efforts; (4) students who report sexual or physical assault will be granted safe harbor from discipline relating to sexual activity or other code of conduct violations; and (5) BYU's non-discrimination policy includes sexual orientation and gender identity as applied to all aspects of BYU, including housing and other programs.

Compensation for emotional distress and for the economic consequences of not being able to complete her degree.

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12. We cannot accept your complaint if it has not been signed. Please sign and date
your complaint below.

07/23/2021

(Date)

Jul 23, 2021

(Date)



(Signature)

Beth Martin

(Signature of person in Item 2)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

June 6, 2022

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

Via email only: Lauren@paulsouthwick.com

Ms. Lauren Swain
Paul Southwick Law, LLC
Religious Exemption Accountability Project
8532 North Ivanhoe Street, #208
Portland, OR 97203

Re: Brigham Young University – Idaho
OCR Reference No. 10212152

Dear Ms. Swain

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its evaluation of your discrimination complaint against Brigham Young University – Idaho, which was received on July 27, 2021. In your complaint, you alleged that the University discriminated against Rachel Moulton and currently discriminates against students based on sexual orientation.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX. Title IX and its implementing regulation contain several exemptions and exceptions from its coverage. *See* 20 U.S.C. §§ 1681(a)(1)-(9); 34 C.F.R. §§ 106.11-106.15.

By letter to the Assistant Secretary for Civil Rights dated March 14, 2022, the University requested an assurance of exemption from any Title IX requirements related to sexual orientation or gender identity, which conflict with the religious tenets of the religious organization that controls the University, as applied to individuals' behavior and conduct. By letter dated May 9, 2022, the Assistant Secretary for Civil Rights assured the

University of its exemption from the following regulatory provisions to the extent that application of those provisions would conflict with the religious tenets of the University's controlling religious organization that pertain to sexual orientation and gender identity:

- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)
- 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)
- 34 C.F.R. § 106.51-61 (relating to employment)

Because the University is exempt from the above-referenced regulatory provisions of Title IX to the extent that application of those provisions conflict with the religious tenets of its controlling religious organization, OCR lacks jurisdiction to address the complaint allegations. Accordingly, OCR is dismissing this complaint pursuant to Section 108(f) of its *Case Processing Manual* as of the date of this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. This letter serves as OCR's final agency determination, and there is no right to appeal.

It is also important for you to understand that the laws OCR enforces prohibit the University from harassing, coercing, intimidating, discriminating, or otherwise retaliating against you because you filed a complaint or participated in the complaint resolution process. If this happens, you may file another complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this matter, please contact Craig Peters, OCR Attorney, by telephone at (206) 607-1646, or by email at Craig.Peters@ed.gov.

Sincerely,

Tania Lopez
Acting Chief Attorney